IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO :25578 of 1998

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Dated: 9th July 2007.

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Between:

M/s. Panyam Cements Limited, Cement Nagar P.O. District, Kurnool, rep by its Joint Managing Director, Sri V. Ramnath.

..... PETITIONER

AND

The Hon'ble Industrial Tribunal-I, 1st Floor, Chandra Vihar, M.J.Road, Hyderabad, rep by its Chairman and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA

RAO

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W.P.NO.25578 OF 1998

ORAL ORDER:

This writ petition has been directed against the Award passed on 23-03-1998 in I.D.No.23 of 1997, instituted by the 2nd respondent herein.

The 2nd respondent had invoked the provisions contained under Section 10 r/w Section 2(a) of the Industrial Disputes Act, 1947 and got the dispute referred for adjudication by the Industrial Tribunal, when he was sought to be retired from the service of the writ petitioner on attaining the age of superannuation of 58 years as on 30-06-1996. The claim of the 2nd respondent is that he was working at a Mine run and operated by the same employer, i.e., the writ petitioner, where the age of superannuation is 60 years and, therefore, his premature retirement amounts to bringing about termination of his employment.

It is not in doubt that the 2nd respondent in the writ petition has been selected and appointed as a Compounder at a dispensary run and managed by the writ petitioner on 14th September 1961. Pursuant thereto, he joined the service of the writ petitioner on 26th September 1961 and ever since he has been working. In

terms of the Standing Order No.16 (e) of the Standing Orders, approved for the workmen of the factory, the age of superannuation is 58 years and, therefore, the action of the writ petitioner-company retiring the 2nd respondent on 30-06-1996, is perfectly legal and valid. However, there are different sets of Standing Orders approved for those who work in the Limestone quarries and Shale quarries of the Company. Standing Order No. 21(1) of the aforementioned Standing Orders, prescribes the age of superannuation to be 60 years. If the Standing Orders approved for those workmen, who work in the Limestone quarries is applicable to the case of the 2nd respondent herein, the action of retiring him on attaining the age of 58 years becomes improper and contrary to the approved Standing Orders. Therefore, the question centers around the fact whether the 2nd respondent was working with the Limestone quarry operated by the writ petitioner-company or at the factory premises of the writ petitioner.

On behalf of the 2nd respondent-workman he had examined himself as WW-1 and got marked Exhibits W-1 to W-13. On behalf of the writ petitioner-management, it examined its Senior Manager, H.R.D., and Senior Medical Officer as MW-1 and MW-2 respectively and got marked Exhibits M-1 to M-33.

The 2nd respondent had placed heavy reliance upon Exhibit M-18 an extract of the register of the employees maintained in Form-B and Exhibit W-12 a

metallic token issued to him. The 2nd respondent would assert that he had been working in the first-aid room of the Kandikayapalli lime Mines operated by the writ petitioner. This first-aid station is operated of rendering first-aid to such workmen, who suffer injuries while working in the Mine. Admittedly, the management, apart from relying upon the depositions of its two witnesses, had placed reliance upon various documents got marked on its behalf to show that the name of the 2nd respondent is continuously figuring on the rolls of employees of the dispensary maintained at the factory premises, but not at the Mine/quarry operated by it and, therefore, he is not entitled to be retained in service till he attains the age of 60 years.

I have heard Sri Ravishanker for Sri P. Nageswara Sree on behalf of the petitioner and Sri William Burra for the 2nd respondent-workman.

Sri Ravishanker would contend that the writ petitioner-management has acted strictly in accordance with the approved Standing Orders for the workmen of the factory in proposing to retire the 2nd respondent on attaining the age of superannuation of 58 years and, therefore, such an action cannot be termed as an act of retrenchment, for, one, to treat the same as an industrial dispute. Therefore, he contends that the reference made to the Industrial Tribunal, is not maintainable. Further, the Industrial Tribunal has completely ignored the

voluminous material that has been marshaled before it and it has arrived at an improper finding that the 2nd respondent-workman had been engaged in the service of the Kandikayapalli lime Mines, therefore, the findings recorded by the Tribunal are factually inaccurate and are not sustainable.

Before adverting to the first contention canvassed on behalf of the writ petitioner, it would be appropriate to consider the effect of the amendment brought about through Act No.35 of 1965 to the Industrial Disputes Act, by introducing Section 2-A therein, which reads as under:

> "**2-A. Dismissal, etc., of an individual workman to be deemed to be an Industrial Dispute:-** Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

From a perusal of the above provision, where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with such act shall be deemed to be an industrial dispute. It will also be useful in this context

to consider the definition of the expression "retrenchment", which is defined under Section 2(oo) of the Industrial Disputes Act, in the following words

> " Section 2(oo)
>
> (1) The expression 'retrenchment' means termination of the service of the workman for any reason whatsoever, other than those expressly excluded by the definition in Section 2(oo) of the Act-The expression 'retrenchment does not mean only termination by the employer of the service of surplus labour for any reason whatsoever-The expression 'retrenchment' is not to be understood in its narrow, natural and contextual meaning, but is to be understood in its wider, literal meaning to mean termination of service of workman for any reason whatsoever."

From a perusal of the above definition, it can be culled out that the retirement of a workman who reached the age of superannuation is not included within the meaning of retrenchment, but any other means of termination, by the employer, of the service of the workman, for any reason whatsoever, amounts to retrenchment. Therefore, if the workman concerned, in the instant case, is found to be employed with the Mines, in terms of Standing Order No.21 (1), the age of superannuation of such workman being 60 years, any attempt on the part of the writ petitioner to bring about termination of his service at the end of 58 years, does

amount to retrenchment. Therefore, such a dispute is, undoubtedly, liable to be treated as an industrial dispute and hence, the reference made by the Central Government is perfectly maintainable. I, therefore, do not find any merit in the first contention canvassed by the learned counsel for the writ petitioner.

With regard to the second contention, Sri Ravishanker had pointed out that Ex.M-18-Form-B register did contain the name of the 2nd respondent-workman, but however, the name of the 2nd respondent has been incorporated in it only for a single day, i.e., 28-01-1985, by virtue of certain directions issued by the Deputy Director of Mines, who inspected the Mines concerned and, thereafter, realizing that there is no necessity to incorporate his name in Form-B register, the same has not been reflected therein. Therefore, the inclusion of the name of the

2nd respondent for a solitary day, namely, 28-01-1985, he cannot be construed as employed at Kandikayapalli lime Mines and consequently, cannot press to continue in service upto 60 years.

In this context it will be relevant to notice the provision contained in Section 21 of the Mines Act, 1952, which reads as under:

> " 21. Medical appliances.-(1) In every mine there shall be provided and maintained so as to be readily accessible during all working hours such number of first-aid boxes or

cupboards equipped with such contents as may be prescribed.

(2) Nothing except the prescribed contents shall be kept in a first-aid box or cupboard or room.

(3) Every first-aid box or cupboard shall be kept in the charge of a responsible person who is trained in such first-aid treatment as may be prescribed and who shall always be readily available during the working hours of the mine.

(4) In every mine there shall be made so as to be readily available such arrangements as may be prescribed for the conveyance to hospitals or dispensaries of persons who, while employed in the mine, suffer bodily injury or become ill.

(5) In every mine wherein more than one hundred and fifty persons are employed, there shall be provided and maintained a first-aid room of such size with such equipment and in the charge of such medical and nursing staff as may be prescribed."

Even going by the evidence lead in by the writ petitioner in Ex.M-16, there are at least 157 men working in the said Kandikayapalli lime Mines quarry. Therefore, in terms of Sub-section-5 of Section 21 of the Mines Act, it becomes necessary for the writ petitioner to maintain a first-aid room and equipment at the said Kandikayapalli lime Mines quarry and the said first-aid room has got to be kept in-charge of such medical and nursing staff as may be prescribed. To regulate this exercise, Rules

have been specifically incorporated in Chapter-VI of the Mines Rules, 1955. Rules 41, 42 and 43 of the Mines Rules, are relevant for our inquiry and, therefore, they are extracted herein below

> " 41. First-aid qualifications.—No person other than qualified nurse, dresser, compounder-cum-dresser nor medical practitioner shall be appointed to render first-aid[or to be in charge of a first-aid station referred to in rule44] unless he is the holder of a valid first-aid certificate of the standard of St.John's Ambulance Association (India).
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> 42. First-aid Personnnel.—(1) The owner, agent or manager of a mine shall see that every first-aid station provided under rule 44 is placed, during every working shift, in charge of a person holding qualifications specified in rule 41. The person in charge of a first-aid station in any shift should be readily available throughout the shift.
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> (2) The name and designation of every person appointed to be in charge of a first-aid station shall be prominently displayed at every first-aid station.
>
> (3) An up-to-date list of persons appointed to be in charge of first-aid stations in the mine shall be kept in the office of the mine and also displayed prominently at the first-aid room.
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> 43. First-aid rooms.—(1) At every mine employing [more than 150 persons] on any one day of the preceding calendar year, there shall be provided and maintained in good

order a suitable [first-aid room].

(2) The [first-aid] room shall be situated at a convenient place on the surface of the mine and shall be used only for first-aid work.

(3) The [first-aid] room shall have a floor space of not less than [10 square metres] and shall contain at least the equipment specified in the Second Schedule.

(4) *(a)* The first-aid room shall be in charge of a qualified medical practitioner, where the number of persons ordinarily employed in a mine is more than 1000, such medical practitioner shall be a whole time employee at the mine.

(b) The medical practitioner referred to in clause *(a)* shall be assisted by a nurse and a dresser or a compounder and a dresser who are qualified in the Allopathic system of medicine. Whenever the Chief Inspector feels it necessary, he may require by an order in writing that such number of additional nurses or compounders or dressers shall be appointed to assist the medical practitioner as may be specified by him.

(c) The nurse, compounder or dresser referred to in clause *(b)* shall be whole time employee of the mine and shall be readily available at the first-aid room throughout the period when persons work at the mine;

Provided that where in conformity with any other law in force, or otherwise an adequately equipped hospital or dispensary belonging to the owner of the mine or to any Mines Welfare Organisation is provided and maintained at or in the immediate

> vicinity of the mine, the Chief Inspector or an Inspector authorized by him in this behalf may grant exemption from the provision of this sub-rule subject to such conditions as he may specify in writing.
> (5) Every person who suffers an injury during the course of work shall report for examination or treatment at the [first-aid] room, hospital or dispensary, as the case may be, before leaving the mine, irrespective of first-aid having been rendered at or near the place of work."

The requirement of a first-aid station has been detailed in the third schedule appended to the Mines Rules, 1955. It, therefore, emerges that the first-aid station consisting of the personnel and equipment has got to be compulsorily maintained at every such mine where 150 or more men are employed. Such facilities are intended to cover apart from the routine and day-to-day requirements of medical attention, but also the possible disasters requiring the immediate and emergency attention to be paid. If sub-section-5 of Section-21 is read along with Rule 41, it would be reasonable to construe that no person other than a qualified nurse, dresser or compounder-cum-dresser or a medical practitioner, shall be appointed to render first-aid. It is not in dispute that the 2nd respondent was a qualified compounder and consequently, he can be appointed to render first aid. However, it is the contention

of Sri Ravishanker that apart from the aforementioned medical personnel, any person who is a holder of a valid first-aid certificate of the standard of St.John's Ambulance Association (India), can also be put in charge of the first-aid station to render first aid. Sri Ravishanker would point out that every overman, foreman, sirdar, mate, shot-firer, blaster, electrician and mechanic in a mine shall hold the first-aid qualifications specified in rule 41, and shall carry, while on duty, a first-aid outfit consisting of one large sterilized dressing, one small sterilized dressing and an ampule of tincture or iodine or other suitable antiseptic, and that such outfit shall be securely packed to protect it against the dirt and water, and therefore, he contends that the first-aid station need not be kept in charge of the personnel specified in rule-41 alone.

I am afraid, the contention canvassed on behalf of the writ petitioner is unsustainable for, the requirement of training to such personnel found as mentioned in Rule-45, such as, overman, foreman, sirdar, mate, shot-firer, blaster, electrician and mechanic, in first-aid treatment and to hold such a qualification is not the same as being kept in charge of a first-aid station or to be the first-aid personnel. Obviously, one has to distinguish between personnel, who by virtue of their very nature of employment, are to be kept in charge of a first-aid station and those who are required to possess a recognized training to render first-aid and carry along with them,

while on duty, securely the first-aid outfit, so that, they can render immediate assistance not only for themselves or for any other person, who requires such attention in his immediate vicinity while working in a mine. It is altogether a different thing to keep qualified medical personnel to be in-charge of a first-aid station to undertake the obligation to render such a medical aid in case of necessity arising. I, therefore, do not find any justification in the stand of the writ petitioner that the first-aid station run by it at Kandikayapalli lime Mines, is in charge of the overman, foreman, sirdar, mate, shot-firer, blaster, electrician and mechanic, and, therefore, no medical practitioner, much less, the 2nd respondent is in charge of it. Obviously, the writ petitioner had been ignoring the compulsion thrust upon it in terms of Section 21 r/w Rules 41, 42 and 43 of the Mines Act. It is for the inspecting agency to consider initiating appropriate action against the management of the writ petitioner for its failure to keep a qualified medical practitioner in charge of such first-aid station.

I conclude this issue by holding that it is only such qualified medical personnel, spelt out in Rules 41, 42 and 43 of the Mines Rules, 1955, who can be kept in charge of the first aid room as is compulsorily required to be maintained in view of sub-section 5 of Section 21, but not by any other person, in particular, specified in Rule 45 of the Mines Act.

Coming to the next issue that stares us in the face, that is, the name of the 2nd respondent had been incorporated in the Form-B register.

Section 48 of the Mines Act, imposes a compulsion to maintain, in the prescribed form and place, a register of all persons employed in the Mine requiring certain details to be noted there in respect of each such person. Rule 77 makes it clear that the register so required to be maintained in terms of Section 48 of the Mines Act, is to be maintained in Form-B, and the same has been appended to the Mines Rules, 1955.

Thus, maintenance of Form-B register is a statutory compulsion thrust upon every mine owner, manager or operator, keeping in mind the salutary principle behind the same being that instantaneously the necessary information relating to each of such employee working in the mines can be retrieved and recognized. In Ex.M-18, being Form-B register, the name of the

2nd respondent has been incorporated. It will be relevant to notice that against column No.9, i.e., the date of first appointment with the present owner, it has been recorded as 26th September 1961 being the first initial date of employment of the 2nd respondent with the writ petitioner. Against column No.8, relating to the date of commencement of employment, it has been indicated as 28th January 1985. Form-B register, column No.1 deals with serial numbers and serial No.169 has been

assigned to the 2nd respondent in this writ petition and, incidentally, Ex.W-12-the metallic token issued in favour of the

2nd respondent-workman and exhibited by him before the Industrial Tribunal, bears the same serial number i.e., 169. Therefore, the inference that can be drawn is that the

2nd respondent has been engaged in the employment of the writ petitioner ever since 26th September 1961, but however, his employment at Kandikayapalli lime Mines quarry has commenced from 28th January 1985 and that is the reason why he had been issued a metallic token bearing No.169 indicating the serial number of his employment at the Mine concerned.

It is the contention of Sri Ravishanker that the

2nd respondent had been engaged in the Mine only for

a solitary day, i.e., 28th January 1985, that too, as directed by the Deputy Director of Mines, who inspected the Mine on that day and thereafter, realizing that his name need not be reflected in Form-B register, the same has not been carried out beyond 28th January 1985. MW-1, the Senior Personnel Manager, who had been examined on behalf of the writ petitioner, has undoubtedly deposed that the

2nd respondent-workman was not working in the Mine concerned and that his name has been reflected in the

Form-B register only for one day.

It is worthy to notice that MW-1 has been recruited as a Personnel Manager in the service of the writ petitioner on 01-04-1991, therefore, as a matter of fact, he would not have known as to the events that have taken place on

28th January 1985 or thereafter, prior to his engagement in the service of the writ petitioner at all. This apart, MW-1 has spoken of an endorsement made against column No.10 of the Form-B register- Ex.M-18. Column No.10 deals with the date of termination or leaving of employment by the employee concerned. It has been incorporated there under as '28-01-1985' and it has been written as under; "his name is included in Form-B register with effect from

28-01-1985, but he is not attending duty at quarry. He has been attending to his duties at factory dispensary only."

Unfortunately for the writ petitioner, about this endorsement the Tribunal has commented upon as an unauthenticated-one, since the said endorsement does not bear the signature of anyone who made such an endorsement. Further, the endorsement made is in a different handwriting from the rest of the columns. Further, the crucial word 'not' is, apparently, incorporated between the words 'is' and 'attending', a little later. Therefore, there is any amount of suspicion that is generated by this endorsement. Further, as is alleged, if

the 2nd respondent had commenced his employment on 28-01-1985 and also left the employment at the Mine on the very same day, namely 28-01-1985, I do not think the writ petitioner would have undertaken the trouble of preparing the Form-B register for one day's sake, incorporating the name of the 2nd respondent. Incidentally, the identification marks available on the body of the 2nd respondent have also been noted against column No.12 and his passport size photograph has been fixed against column No.15 of the Form-B register. Therefore, it is reasonable to infer that if the 2nd respondent has worked for a solitary day, namely, 28-01-1985 at Kandikayapalli lime Mines, the writ petitioner would not have taken so much of trouble to incorporate all the details and then file the said register for one single day.

There is also one other reason why this theory propounded by the writ petitioner is not inspiring confidence in me. Ex.M-16, is said to be the muster roll maintained for the Kandikayapalli lime Mines quarry, for the period commencing from 31-01-1985. It had contained 157names, but it did not contain the name of the

2nd respondent. If he had worked only on 28-01-1985, as is sought to be made out by the writ petitioner, his name should have been found a place in Ex.M-16 and his attendance for 28-01-1985, should have been marked.

From the fact that in the said 157 names, the name of the 2nd respondent did not figure indicates that the theory set up on behalf of the writ petitioner, lacks genuineness and, therefore, the theory of the writ petitioner cannot be accepted.

In this view of the matter, when the 2nd respondent-workman had produced photographic evidence marked as Ex.W-17, which is a group photograph taken on the occasion of Mine Safety Week Celebrations, it would unmistakably indicate that the 2nd respondent-workman had been employed at the Kandikayapalli lime Mines quarry. Similarly, Ex.W-9, service certificate, dated 20th September 1991, issued by the Mines Manager of Kandikayapalli lime Mines quarry to the 2nd respondent, wherein he is shown to be working as in charge of the ambulance/first-aid station at the Mine and that he has got good knowledge of dispensing medicines, administering injections and operating the first-aid appliances to the injured. Against this document-Ex.W-9, the writ petitioner would urge that such a certificate was issued by the Mines Manager working with the writ petitioner, after he tendered resignation to his job, but before actually leaving his employment. Even assuming that the Ex.W-9 certificate was issued by the then Mines Manager, after he tendered resignation for his employment, it would be difficult for one to imagine or

speculate that the 2nd respondent would be requiring it to raise an industrial dispute to prevent his retirement on attaining the age of 58 years at a later point of time.

I, therefore, find that the Industrial Tribunal is fully justified in placing reliance upon the said certificate Ex.W-9 and the photographs at Ex.W-11, to arrive at a finding of fact that the 2nd respondent had, in fact, been employed at Kandikayapalli lime Mines quarry, belonging to the writ petitioner and, therefore, the action of the writ petitioner in proposing to retire him on attaining the age of 58 years instead of 60 years, is wrongful. The declaration issued by the Industrial Tribunal that the 2nd respondent-workman is entitled to retire on attaining the age of 60 years i.e., on 30-01-1998, and, therefore, ordering for his reinstatement with full back wages and attendant benefits, is fully justified.

I, therefore, do not find merit in this writ petition and the same is, accordingly, dismissed, but however, in the circumstances, without costs.

Sri Ravishnaker the learned counsel for the writ petitioner prays for two months time for the writ petitioner to pay the said benefits to the 2nd respondent.

Acceding to the said request, the writ petitioner is given two months from the date of receipt of a copy of this order for paying the benefits to the 2nd respondent in terms of the Award passed by the Tribunal.

Nooty Ramamohana Rao, J

9th July 2007
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